

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150



H. THOMAS CADELL, JR., *Chief Counsel*

May 25, 1993

Re: Alternative Workweek Schedules

Your letter of February 12, 1993, directed to Deputy Cora Domingo regarding the above-referenced subject has been assigned to this office for response.

You ask in your letter whether an employee, scheduled to work a regularly scheduled workweek of four ten-hour days may, if he or she is too ill to work a particular day, be scheduled to work on a day not within the regularly scheduled workweek.

The answer is no.

The Division has consistently held that the clear intent of the IWC in adopting the language permitting the alternative workweek was to limit the workweek to a regular schedule and that any work performed outside of that regular schedule must be paid the applicable premium rate.

You state that a rigid enforcement policy penalizes the employee because he or she is not allowed to make up time lost due to illness. You view this as a question of the substitution being the "employee's choice, not the employer's choice." This overlooks the enforcement experience of the Division. With the enforcement policy currently in effect, there can be no question when premium pay is required. Adopting a plan such as you request would require a decision on a case-by-case basis as to whether the change in the regular schedule was, in fact, requested by the employee or strongly suggested or required by the employer.

While your reasoning strikes a sympathetic note and your suggested remedy might, in fact, inure to the benefit of a limited number of workers, the remedy is far more likely to encourage, rather than suppress, the mischief at which the DLSE's policy is

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directed.

Thank you for your interest in California labor law. I am sorry that we can not be of more assistance to you in this area.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw

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